

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
vs.)	CRIMINAL ACTION 09-00242-KD
)	
DHS, INC., d/b/a ROTO ROOTER,)	
DONALD GREGORY SMITH, and)	
WILLIAM L. WILMOTH, SR.,)	
)	
Defendants.)	

ORDER

This action is before the Court on the motion to continue trial filed by the United States (doc. 51). A telephonic conference was held on April 29, 2010, with counsel for all parties participating in the conference. Upon consideration and for the reasons set forth herein, the motion to continue trial is **GRANTED** and this action is continued to the **June 2010** trial term, with jury selection on **Tuesday, June 1, 2010**.¹

The United States states that additional time is necessary to adequately prepare for trial due to counsel's unexpected knee injury and complications following arthroscopic surgery which resulted in substantial time away from work. The defendants agreed to a continuance of this action to the June 2010 trial term with jury selection on June 1, 2010.

Upon consideration of the motion, the grounds stated therein, and the respective positions of counsel as set forth at the telephone conference, the Court finds that "the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). Specifically, the Court finds that denying the United States' request "would unreasonably deny" counsel for the United States, the "reasonable time

¹ The Memorial Day Holiday will be observed on Monday, May 31st.

necessary for effective preparation, taking into account the exercise of due diligence.” 18 U.S.C. § 3161(h)(7)(B)(iv).² For purposes of the Speedy Trial Act, any delay resulting from this continuance is excludable pursuant to 18 U.S.C. § 3161(h)(7)(A) (excluding “[a]ny period of delay resulting from a continuance granted by any judge . . . if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.”).

The Clerk of the Court is directed to refer this matter to the appropriate Magistrate Judge to schedule a pre-trial conference.

DONE and **ORDERED** this the 29th day of April, 2010.

s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE

² The Court notes that counsel for the United States was out of the office for arthroscopic surgery from April 6 through April 9, was diagnosed with a blood clot related to surgery on April 13, hospitalized on April 15, and remained out of the office until April 26th. Moreover, counsel is currently under medical restrictions which limit his ability to prepare for what is expected to be a seven day trial.